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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/798,498

03/11/2004

Pierre Craen

1348

6306

156

7590

05/16/2006

KIRSCHSTEIN, OTTINGER, ISRAEL
& SCHIFFMILLER, P.C.
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NEW YORK, NY 10017

EXAMINER

LE, UYEN CHAU N

ART UNIT

PAPER NUMBER

2876

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/798,498

Applicant(s)

CRAEN, PIERRE ET AL.

Examiner

Uyen-Chau N. Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 03/03/2006.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

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DETAILED ACTION

Prelim. Amdt/Amendment

1. Receipt is acknowledged of the Amendment filed 02/21/2006.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35

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U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-7, 10, 11 and 13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massieu (US 20050218231 A1) in view of Bricot et al (US 4037929 A).

Re claims 1-7, 10, 11 and 13-19: Massieu discloses An management for electro-optically reading indicia having parts of different light reflectivity, comprising: a) a variable optical lens having a pair of light-transmissive liquids [56, 58] arranged along an optical path, the liquids being immiscible, of different optical indices of refraction, and of substantially same density (fig. 2; paragraph [0053]), one of the liquids having a shape in a rest state for optically modifying light passing through the one liquid along the optical path toward the indicia to have a first optical characteristic (i.e., first liquid 56) (paragraph [0054], lines 12-15); and b) a controller (i.e., microprocessor 24) for applying a voltage across the one liquid to change the shape thereof, and for optically modifying the light to have a second different optical characteristic (paragraph [0056]); a light source [42a-42c] for emitting the light to the variable lens (paragraph [0040]); and wherein the first and second optical characteristics are different focal planes spaced apart along the optical path at different working

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distances relative to the variable lens (paragraph [0056]); wherein the light source is a laser for emitting the light as a laser beam (paragraph [0043], lines 5+); a sensor (i.e., optical sensor 14) for receiving the light from the variable lens (paragraph [0037]); and wherein the first and second optical characteristics are different imaging planes spaced apart along the optical path at different working distances relative to the variable lens (paragraph [0056]); wherein the sensor is an array of imaging cells (paragraph [0051], lines 6+); a scanner for scanning at least one of the light, and a field of view, over the indicia 20 (fig. 1; paragraph [0037]); wherein the variable lens includes at least one fixed focal lens spaced apart from the liquids along the optical path; wherein there are two fixed focal lenses having positive and negative optical powers respectively, and wherein the two fixed focal lenses are located at opposite ends of the variable lens (fig. 2; paragraphs [0054-0055]); wherein a first electrode is disposed at one side of the one liquid, and wherein a second electrode is immersed in the other liquid at an opposite side of the one liquid, and wherein the voltage is applied across the electrodes (paragraphs [0054-0056]).

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Massieu is silent with respect to the variable lens having a well in which the one liquid is accommodated in symmetrical relation relative to the optical path.

Bricot et al teaches a liquid nematic crystal is contained within a hollow/well of a glass lens that is arranged on the path of the optical beam (col. 1, lines 27-40 and col. 4, lines 36-48).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate a hollow glass lens of Bricot et al into the system as taught by Massieu in order to center a liquid drop laid on a surface without using a modification of the surface wettability, which enables centering the drop for different contact angles by means of an electric voltage.

5. Claims 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massieu as modified by Bricot et al as applied to claim 1 above, and further in view of Berge et al (US 6,369,954). The teachings of Massieu as modified by Bricot et al have been discussed above.

Re claims 9 and 12: Massieu/Bricot et al has been discussed above, but is silent with respect to one liquid is electrically insulating and the other of the liquids is electrically conductive, wherein the variable lens has an electrically

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insulating wall on which the one liquid rests, and wherein the second electrode contacts the insulating wall.

Berge et al teaches a variable focus lens comprising a chamber (12) filled with a first liquid (13), a drop of a second liquid (11) being disposed at rest on a region of a first surface of an insulating wall of the chamber, the first and second liquids being non miscible, of different optical indexes and of substantially same density. The first liquid is conductive and the second liquid is insulating. The lens further comprises means for applying a voltage between the conductor liquid and an electrode (16) placed on the second surface of said wall; and centering means for maintaining the centering of the edge of the drop while the voltage is applied and for controlling the shape thereof (abstract and fig. 1; col. 3, lines 3-39).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to further employ the insulating wall and the conductive liquid and the insulating liquid of Berge et al into the system as taught by Massieu/Bricot et al in order to provide Massieu/Bricot et al with an alternative means for forming a variable focus lens system using immiscible liquids having the same density. Furthermore, such modification would have mere been a

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substitution of equivalents well within the ordinary skill in the art, and therefore an obvious expedient.

6. Claims 8 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massieu as modified by Bricot et al as applied to claims 1 and 15 above, and further in view of Danielson et al (US 4877949 A). The teachings of Massieu as modified by Bricot et al have been discussed above.

Re claims 8 and 20: Massieu/Bricot et al has been discussed above, but is silent with respect to an analyzer for determining whether the indicia was successfully scanned and read, and wherein the controller is operative for applying the voltage upon a determination that the indicia was not successfully scanned and read.

Danielson et al teaches a control and processing means 10 serves as an analyzer for determining if a valid total reading had been obtained, if not proper high voltage was building up for further series of flashes/scans (col. 8, lines 59-62 and col. 11, lines 30-37).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the determination of Danielson et al into the system as taught by Massieu/Bricot et al in order to provide Massieu/Bricot et al with a more accurate system in which an invalid/unsuccessful

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scan/read can be determined readily so that repeating scans can be performed instantaneously, preventing the system from producing unexpected misread results due to errors occurred during reading process.

Response to Arguments

7. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Newly cited reference to Bricot et al has been used in the new ground of rejection to further meet the newly amended limitation of the claimed invention.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action

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is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Uyen-Chau N. Le whose telephone number is 571-272-2397. The examiner can normally be reached on maxi-flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on 571-272-2398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Uyen-Chau N. Le
Primary Examiner
Art Unit 2876

May 15, 2006